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91-957

Supreme Court, U.S.  
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Application No. A-322

IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1991

ABELARDO BAEZ, ET AL.,

Petitioners,

v.

WELLS FARGO ARMORED SERVICE CORP.,

Respondent.

PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION  
FOR WRIT OF CERTIORARI

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The Petition for Writ of Certiorari does not raise any novel issue, and the decision of the United States Court of Appeals for the Eleventh Circuit does not conflict with the decision of any other United States Circuit Court of Appeals.

The statement of the case is succinctly set forth in the decision by the United States Court of Appeals for the Eleventh Circuit. Additionally, germane facts to which the parties stipulated in the district court are set forth in this decision.

The undisputed material facts establish that the petitioners (hereinafter referred to as the "plaintiffs") were exempt from the overtime provision of the Fair Labor Standards Act, 29 U.S.C. § 207, pursuant to Section 13(b)(1) of the Act, 29 U.S.C. § 213(b)(1). Section 13(b)(1), an exemption which should be given broad application, exempts employees with respect to whom the Secretary of Transportation (formerly the Interstate Commerce Commission) has the power to establish qualifications and maximum hours of service. Levinson v. Spector Motor Service, 330 U.

S. 649, 661-62, 677 (1947). The Secretary of Transportation had such power with respect to the plaintiffs in the present case.

The Secretary of Transportation has the power to regulate carriers, such as the respondent (hereinafter referred to as the "defendant"), which engage in or may engage in "interstate commerce". The United States Court of Appeals for the Eleventh Circuit properly held that the defendant's Miami operation was subject to the Secretary of Transportation's jurisdiction even though the vehicles on which the plaintiffs rode did not leave the State of Florida. The cases cited by the district court and by the United States Court of Appeals for the Eleventh Circuit, as well as those relied upon by the plaintiffs, establish that for purposes of the Section 13(b)(1) exemption, "interstate commerce" includes the intrastate transportation of property which is part of a practical continuity of movement across state lines from the point of origin to the point of destination. Here, the plaintiffs stipulated that property on the vehicles on which they rode were

ultimately bound for destinations outside of Florida.

The appellate court properly concluded that the plaintiffs, as "driver guards" or "messenger guards" on defendant's armored vehicles, were exempt because they engaged in activities directly affecting the safety of operations. In reaching this conclusion, the appellate court relied on Levinson v. Spector Motor Service, 330 U.S. 649 (1947). There, this Court held that the courts may not question the Interstate Commerce Commission's (or the Secretary of Transportation's) conclusion that "drivers" and "driver's helpers" as defined by the Interstate Commerce Commission (or the Secretary of Transportation) affect the safety of operations of the carriers by whom they are employed. Id. at 673. In Opelika Royal Crown Bottling Co. v. Goldberg, 299 F.2d 37 (5th Cir. 1962), the court observed that the Interstate Commerce Commission concluded that "guards on armored bank trucks . . . performed services which affect the safety of the vehicle. . . ." Id. at 43.

Furthermore, the U. S. Department of Labor's regulations pertaining to the Section 13(b)(1) exemption define "driver's helper" to include armed guards on armored trucks. 29 C.F.R. §§ 782.4(a) and (b).

Summary judgment was properly granted because the plaintiffs were employed by a carrier whose transportation of property was subject to the Secretary of Transportation's jurisdiction and they engaged in an activity of a character directly affecting the safety of motor vehicles in the transportation of property in interstate commerce. See, 29 C.F.R. § 782.2(a).

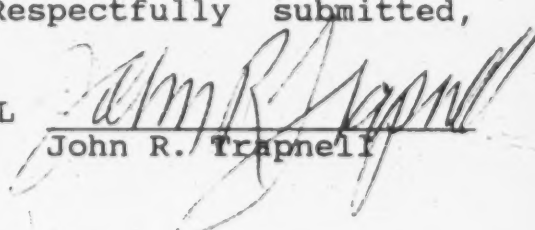
#### CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

This the 19th day of December, 1991.

Respectfully submitted,

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